COMMENT.

Since the suggestion of Justice Story in the Dartmouth College case the States, in granting special charters of incorporation, have very generally reserved the right to alter and amend or have asserted it in their general laws of incorporation. But such a doctrine is utterly destructive of all property rights. Hence the more conservative view has been generally adopted that in this respect the States are left in the situation in which they were before the Dartmouth College case, before it was decided that private charters are contracts within the Constitutional provision against their impairment. But for this Constitutional provision the power of the State to amend would exist with no reservation in the charter. Hence the question is now whether such an amendment or alteration by the State is within the reservation or not. If it is, the further question as to impairment of the charter contract must be decided; but if not, no such question arises, as for this reason alone the amendment must fail.

The last legislature of Indiana enacted as an amendment to the general law for the incorporation of street railways (a section of the law expressly reserving this right of amendment) that in cities having a population of 100,000 or more, according to the U. S. census of 1890, the cash fare should not exceed three cents for each trip. Another section gave the directors power to make by-laws regulating the fare on their roads. In passing on the validity of this amendment the Supreme Court of Indiana and the U. S. Circuit Court came to directly opposite conclusions. In *City of Indianapolis* v. *Navin*, 47 N. E. Rep. 525, the former upheld its validity solely under the general police power of the State as to regulation of rates, which power they declare would exist even if the right to amend had not been reserved and the exercise of which here does not impair the obligation of any valid contract of either the State or the city. But can this police power be so exercised as to conflict with the provisions of the charter contract? Every amendment must come within the reservation or the charter is violated. And squarely on this point the two courts split. The Indiana Constitution prohibits special laws except in certain specified cases, which do not include this, and in all others where a general law can be made applicable, further providing that corporations other than banking may be formed under general laws. The Indiana court de-

clares that whether a general law can or cannot be made applicable is a question exclusively for the legislature and not reviewable by the courts, and even if this were a local law which they do not decide) it is not special, because it applies alike to all roads now or hereafter operated in that locality. Some weeks later the Circuit Court in *Central Trust Co.* v. *Citizens' Street Ry. Co.*, 82 Fed. Rep. 1, after justifying its disregard of the decision of the State court as final, on the ground that the controversy concerned a contract whose meaning depended on the construction of a statute, which construction was made after the contract was entered into, held to the contrary. Its argument was that the contract provision in its charter that the directors may fix the rates cannot be altered by the Legislature unless power so to do is reserved by the charter (*Reagan* v. *Trust Co.*, 154 U. S. 362), and the action of the Legislature must come within this reservation. The Legislature has no general authority under which it can change this corporate power with regard to rates in contravention to the charter contract. The power to regulate rates in distinction to the power to pass laws making for the public health and morals can be contracted away by the States. Further the amendment is special and local, as it applies only to the one city of Indianapolis, and can never apply to any other now or hereafter. Hence the law of incorporation so amended becomes special and contrary to the Constitution.

The latter opinion seems to us to be based upon the sounder reasoning. The Indiana court clears the subject of constitutional objections by placing its decision on the police power of the State. But in the matter of regulating rates the police power cannot be exercised so as to violate any charter or contract previously existing or constitutional provision (2 Mor. Pin. Corp., Sec. 1075). If the amendment had not made the general law of incorporation special, it must have stood.

All persons who have invented or evolved any machine or process of manufacture, whether patentable or not, are entitled to have their property in such invention protected from infringement. When any article is made under such conditions and placed on general sale, the public have a right, by any legitimate means within their power, to ascertain the method of manufacture, and to apply such knowledge to their own benefit. But under such a right an employee of a firm producing such articles may not disclose the knowledge he has acquired in his work, whether he has signed an agreement to refrain from so

doing or not. The case of *O. & W. Thum Co.* v. *Tloczynski*, 72 N. W. Rep. 140, is of value in drawing the above conclusions. The defendant had been employed in the manufacture, by a secret process, of sticky fly-paper; and, after leaving their employ, expressed his intention of disclosing to others, desirous of entering into competition with the plaintiff, such knowledge of the process involved as he had acquired; whereupon an injunction was asked for. The fact that a person has a right in any secret process, though unpatented, which a court of equity will respect, is well settled by numerous decisions, notably *Peabody* v. *Norfolk*, 98 Mass. 452. Having such a right he can make and enforce a contract with an employee against the disclosure of any knowledge acquired in such business. One of the best cases where such a contract existed, was that of *Kodak Co.* v. *Reichenbach*, 79 Hun. 183, 29 N. Y. Supp. 1143, which was cited in *Little* v. *Gallus*, 38 N. Y. Supp. 487. This latter case was very similar in principle to the one under discussion, there being no express contract. The claim brought forward that such contracts are in restraint of trade is of little importance. It has been repeatedly held that contracts for the exclusive use of a secret art are not in restraint of trade, and hence if one can agree with another to refrain from using a secret process most certainly an employer may so contract with his employee.

A case not reported as yet, but found in the *Albany Law Journal* for October 16, is *In re Arthur L. Weeks.* This case arose upon a demand by a State court upon an Internal Revenue Collector, whose headquarters were in an adjoining State, where certain revenue papers were on public file, for information contained therein. Upon his refusal to disobey the orders of the Treasury and Internal Revenue Departments, forbidding such testimony, he was committed for contempt, and petitioned for a release on *habeas corpus.* On the hearing the petition was granted, and the case was declared similar to *In re Huttman*, 70 Fed. Rep. 699, and distinguished from *In re Hirsch*, reported in 74 Fed. Rep. 928, and commented on in the February number of this JOURNAL. The jurisdiction of the State and Federal courts in *In re Hirsch* was held concurrent, while in the case at bar, upon the principle set forth in *In re Neagle*, 135 U. S. 1, the State court had no control over papers filed in another State. The State, instead of attempting to compel the collector to testify, should have obtained the information necessary from the papers themselves, which were open to public inspection.